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FEDERAL COMMUNICATIONS COMMISSION

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In the Matter of

Rulemaking No. 8763.

( Reply Comments In Favor of  
( The FCC And In Opposition  
( To Rulemaking No. 8763.  
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INTRODUCTION.

The opposition, reply comments and remedial request contained herein are offered by "THE VOICE of HAM-REASON" (VOHR), a very special newsletter "...devoted entirely to the preservation of the Amateur Radio Operation as an ongoing, continuous hobby." It is published on a discretionary basis as the occasion demands.

Subscription to VOHR is entirely free; and it accepts no advertising. VOHR numbers among its subscribers, the President; the Vice-President, both Illinois Senators; Congressman Mike Flanagan; Senator Barry Goldwater, K7UGA; members and the General Counsel of the FCC; all directors and officers of the American Radio Relay League, (hereinafter termed either the "League," or the "ARRL"); and a host of amateur radio operators dispersed throughout the nation who want an independent view-point of current U.S. Gov't., FCC, state and municipality, League and other ham happenings which VOHR provides.

The publisher/editor of VOHR is KARL A. KOPETZKY, K9AQJ, of 3619 N. Lamon Ave., Chicago, IL 60641, who personally pays all the expenses of VOHR. He has been a continuously licensed amateur radio operator, Advanced Class, and an amateur radio station owner for about 75 years. The first license issued him was signed by Herbert Hoover, the then Secretary of Commerce. Kopetzky has held his FCC-assigned, station call-letters, K9AQJ, in excess of 40 years.

Additionally, he is an attorney who has been duly admitted to practise before your honorable Commission for in excess of 25 years; and a formerly licensed "Professional (Electronic) Engineer (PE) in the states of Illinois and California since 1945

REPLY COMMENTS IN OPPOSITION: General.

RM 8763 is the result of what is essentially a "cry-baby" petition filed by the ARRL last February to enhance PRB-1 (101 F2d 952) as presently included in FCC Rules Part 97.15(e), ostensibly because of the League's dissatisfaction with the way PRB-1 has worked. In the petition, the League not only wants the FCC to set a minimum, acceptable, ham station antenna height of 70 feet, but wants the community wishing to evade this provision, to have to petition the FCC for a waiver which might be issued at the discretion of the Commission. There is also a request that FCC preempt zoning board and community fee and associated charges in

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connection with antenna tower erection permits, et al.

The basis for this bald example of outrageous chutzpah, is that, according to the press, the League thru David Sumner its Executive Vice President, stated that communities "have blatantly and repeatedly circumvented the Commission's intent of PRB-1," However, he failed to provide evidenciary facts substantiating the League's idea of the alleged, so called FCC "intent of PRB-1."

Apparently, Mr. Sumner also fails to recognize that it is proper and acceptable, legal procedure to use any loopholes discovered in an Act or Law, to defeat or defuse that Act or Law, if that is the goal of the litigator. Thus, circumventing a law legally, is proper.

Furthermore, the League is acting on behalf of those amateur radio operators who either do not wish to acquire the skills necessary to make a lot of amateur radio contacts. Or feel their expensive ham gear plus a really high antenna structure, not less than 70 feet high, will per se make acquisition of such contacts in large numbers with stations at great distances, an ongoing, continuous reality. Electronically, that may or may not be true depending on the geographical antenna structure location. In short, a 70-ft antenna structure is not necessarily the quid pro quo of making many radio contacts with stations at great distances, etc.

Still there are many, many amateur radio operators, some with antennas as short as 21 feet, who have achieved between 5000 and 6000 or more, amateur radio contacts within the last four to six years. Nearly all those operators will attest that it takes about 99% skill, not a high antenna structure for such an accomplishment.

Finally if granted, the petition will assure the FCC a mountain of unnecessarily extra paper work, which is exactly what it is trying to avoid. The petition will also generate a plethora of law cases, some addressed to the FCC or the petition itself, perhaps to its unconstitutionality. Other cases may involve the FCC in court battles between amateur radio operators and community zoning boards, etc, all due to the amateurs' citation of the "new" and enhanced PRB-1 the petition seeks. All of this is totally unnecessary and serves no useful purpose for the amateur radio operators, for the FCC or for the public.

To open that type of "Pandora's Box" auguring that much unnecessary trouble and woe, is certainly contraindicated and the petition should therefore be denied.

REPLY COMMENTS IN OPPOSITION: Specific.

The present PRB-1 (101 F2d 962) is more than adquate, and requires no further enhancement.

The probable intent of the FCC in enacting the present PRB-1, now part of Rule 97.15 (e), is that zoning boards and/or communities must not out-of-hand deny an amateur radio operator an antenna or antenna structure when he applies for an antenna structure permit or variance. They must carefully investigate all pertinent facts surrounding the application; and make suitable findings in an honest effort to "accomodate amateur radio service communications," and attempt to negotiate some sort of a mutually satisfactory compromise with the applicant, if and when it comes to that.

Having done that, if the applicant cannot show in some evidenciary way that he is committed to providing emergency community communications (ARRL's AES?) and/or being involved in providing emergency communications for the national defense service (MARS?); and if the applicant refuses to compromise, etc., PRB-1 will nevertheless have been satisfied. And a denial of the requested antenna structure height permit or variance will be proper.

That such legal "philosophy" has been approved by the court, is found in the case of Howard v. City of Burlingame, (937 F2d 1376), where the U.S. Court of Appeals in reviewing the Howard case, affirmed the zoning board's actions in the prior Williams case (Williams v. Cty of Columbia; 906 F2d 994), indicating that the zoning board had been correct in denying the Williams permit application because he was not involved in either emergency community or national defense service emergency communications. Therefore, the court said, his amateur radio operations primarily constituted a hobby, and indicated he was not entitled to the requested antenna structure, variation permit.

That clearly defined amateur radio operations when not involved in community emergency and/or national defense service emergency communications, as a hobby, and not as a "service." From which it can be deduced that the FCC is under no compulsion to enhance a hobby with an extended preemption of PRB-1.

The record is clear that in most cases where citing of PRB-1 has failed to force a community to permit an extraordinarily high antenna structure, the case amply developed that the permit request was simply for an Ego Trip by the applicant who was in no way involved in emergency community or national defense service communications. The denial, therefore, was proper, and in keeping with the intent of PRB-1, the ARRL's petition to the contrary notwithstanding.

Yet when cited, PRB-1 has been able to force communities to allow high antennd structures where requested by amateur radio operators who were involved either in emergency community or emergency national defense communications. This was the purpose of PRB-1 in the first place. In this respect, PRB-1 has obviously

done more than an adequate job,

Next, the petition requests the FCC preempt zoning board and/or community, amateur radio antenna structure permit fees and charges to keep them low; or order them capped at some specific, low figure. That part of the League's petition is too frivolous to be taken seriously.

Aside from its probable unconstitutionality, it is totally unrealistic. Consider that 70-ft antenna towers mandated in the petition, cost between \$2300 and \$3500, while a motorized, crankup, 100-ft tower can cost as much as \$16,000+, all without including necessary concrete base installation charges, etc. Under such circumstances, an average permit charge in the realm of \$500 etc. is well within reasonableness. And certainly affordable by those who can afford the cost of the towers they seek thru the petition.

#### CONCLUSION.

For the reasons stated above; and because the present PRB-1, while perhaps weak in some respects, nevertheless is doing more than an adequate job for those amateur radio operators who are involved in emergency community and/or national defense service emergency communications, and who may require special, antenna structure heights... the petition Rulemaking No. 8763 should be denied in toto.

Respectfully submitted,

THE VOICE of HAM-REASON  
by



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Editor/Publisher

Dated. 20 March 1996